

REMARKS

The office action of September 22, 2005, has been carefully considered.

It is noted that claims 1, 3-13 and 16 are rejected under 35 U.S.C. 102(b) over the patent to Bernreuter.

Claims 2, 15 and 17 are rejected under 35 U.S.C. 103(a) over Bernreuter.

Claims 14, 18 and 19 are rejected under 35 U.S.C. 103(a) over Bernreuter in view of the patent to Chance.

Claims 20 and 21 are rejected under 35 U.S.C. 103(a) over Bernreuter in view of Official Notice.

In view of the Examiner's rejections of the claims, applicant has amended claims 1 and 14.

It is respectfully submitted that the claims presently on file differ essentially and in an unobvious, highly advantageous manner from the constructions and methods disclosed in the

references.

Turning now to the references and particularly to the patent to Bernreuter, it can be seen that this patent discloses a measuring process for blood gas analysis sensors. Bernreuter does not disclose a method or device for controlling a device for measuring quantitative proportions of blood constituents in which during the measuring procedure a standard calibration function is combined with a scattering determination and the results of the standard calibration function as well as the output value of the scattering determination are combined with each other by a combiner according to an algorithm preset as an individual calibration function, and in which an output value of the comparator is combined with a measurement variable and the combination of the output value of the combiner and the measurement variable yields the respective target quantity, as in the presently claimed invention. The use of individual calibration functions makes possible a very exact measurement even with consideration of individual local conditions, in particular the individual tissue structure. The present invention provides a non-invasive measuring arrangement that is automatically calibrated to the individual application conditions, so that very accurate measurement results are

possible despite influence on the measuring procedure by the individual tissue structure.

In view of these considerations it is respectfully submitted that the rejection of claims 1, 3-13 and 16 under 35 U.S.C. 102(e) and the rejection of claims 2, 15 and 17 under 35 U.S.C. 103(a) over the above-discussed reference are overcome and should be withdrawn.

The patent to Chance discloses a system for tissue examination using directional optical radiation.

The Examiner combined Bernreuter with Chance in determining that claims 14, 18 and 19 would be unpatentable over such a combination. Applicant respectfully submits that neither of these references, nor their combination, teach a device for measuring quantitative proportions of blood constituents as in the presently claimed invention. The combination does not teach the combination of feature now recited in amended claim 14.

In view of these considerations it is respectfully submitted that the rejection of claims 14, 18 and 19 under 35 U.S.C. 103(a) over a combination of the above-discussed references is overcome

HKH-07

and should be withdrawn.

Relative to claims 20 and 21, the Examiner's Official Notice does not add teaching to the above discussed references so as to arrive at the invention now recited in the claims.

In view of these considerations it is respectfully submitted that the rejection of claims 20 and 21 under 35 U.S.C. 103(a) is overcome and should be withdrawn.

Reconsideration and allowance of the present application are respectfully requested.

Any additional fees or charges required at this time in connection with this application may be charged to Patent and Trademark Office Deposit Account No. 11-1835.

Respectfully submitted,

By 

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HKH-07

Dated: December 20, 2005

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, PO Box 1450 Alexandria, VA 22313-1450, on December 20, 2005.

By: 
Friedrich Kueffner

Date: December 20, 2005